IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Rajesh & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.1428/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 18-10-2002 in Sessions Case No.13/2002 passed by Sh. Rameshwar Vyas, RHJS, Additional Sessions Judge (Fast Track) Kishangarhbas (Alwar).

Date of Judgment: September 10, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. S.R.Bajwa, Senior Advocate with] for the appellants.
Mr. V.R. Bajwa]

Mr. B.N.Sandhu, Public Prosecutor for the State.
Mr. Vipul Jaiman for Mr.S.S.Sunda for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Dead body of Sawant Ram was found in a dry well. According to prosecution Rajesh and Nihal Singh, appellants herein, committed murder of Sawant Ram by inflicting injury on his head and pushing him down into the well whereas defence has come up with the story that Sawant Ram in a drunken state himself accidentally slipped into the well and died. Learned Additional Sessions Judge (Fast Track) Kishangarhbas District Alwar, however found the prosecution evidence trustworthy and vide judgment dated October 18, 2002 convicted and sentenced the appellants as under:-

U/s.302 IPC:

Both to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer rigorous imprisonment for three years.

U/s.201 IPC:

Both to suffer rigorous imprisonment for three years and fine of Rs.500/-, in default to further suffer rigorous imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. Prabhu Dayal (Pw.2) a retired teacher came to know in the evening of October 15, 2001 that a dead body was lying in his well. He rushed to the police station Mundawar and handed over a written report (Ex.P-9). The police lifted the dead body out and it was identified as of Sawant Ram. Proceedings under section 174 CrPC were initiated. Inquest report (Ex.P-5) was drawn. Post Mortem on the dead body was performed. Clothes found on the dead body got seized vide seizure memo (Ex.P-6). No blood was seen on the clothes. Chain of the wrist watch and Gutka `Mahak' (Tobacco satches) also got recovered from the well. Bhoop Singh (Pw.1) (brother of deceased) identified chain and Gutka as belonging to the deceased. It also appears that in the Inquest Report (Ex.P-5) it was opined that Sawant Ram died on account of injuries sustained by fall into the well. The memos were drawn in presence of Bhoop Singh who put his signatures on them. Thereafter on October 17, 2001 at 5.30 PM another written report (Ex.P-1) was submitted by Bhoop Singh with the averments that on October 13, 2001 at 9.00 AM Rajesh and Nihal Singh (appellants) came to his house and took Sanwat Ram with them. Thereafter Sanwat Ram did not return back. Prior to recovery of dead body Nihal Singh and his mother came to the house and on being enquired about Sawant Ram, Nihal informed that around 8.30 PM on August 13 itself Sanwat Ram got separated near the electricity

house of Prabhu Dayal Master. On October 15 dead body of Sanwat Ram was found in the well of Prabhu Dayal. The informant expressed in the report that Rajesh and Nihal had committed murder of Sanwat Ram. On that report a case under sections 302 and 201 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, appellants were arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Kishangarhbas District Alwar. Charges under sections 302 and 201 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence and stated that since they had sold a land to Rohtash Patwari, which situated near the complainant, the complainant became angry and implicated them falsely in the instant case. No witness in support of defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Indisputably there is no eye witness of the occurrence and the case of prosecution rests on the circumstantial evidence. We have therefore to examine whether:-

> (i) the circumstances from which an inference of guilt is sought to be drawn, have been cogently and firmly established;
> (ii) those circumstances are of a definite tendency unerringly pointing towards the guilt of the appellants;
> (iii) the circumstances, taken cumulatively, form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the appellants and none else.

4. Mr. S.R.Bajwa, learned Senior Counsel canvassed that the appellants have been falsely implicated only on the basis of misplaced suspicion. According to learned counsel the so called incriminating circumstances have not been proved by the prosecution beyond all reasonable doubts with the aid of clinching evidence. There is no evidence to prove motive of appellants to liquidate the deceased. The factum of the deceased leaving his house in the company of appellants cannot be said to be a clinching last seen circumstance as there is an interregnum of two days in between before the dead body was found. Otherwise also the circumstance of last seen cannot be the solitary basis of conviction under section 302 IPC. No recovery of any weapon or any belonging of deceased had been effected from appellants. It is further contended that the possibility of deceased having fallen in the well in an inebriated condition is strongly reflected from attending circumstances of the case. The injuries suffered on his person might have been received on account of the said fall in the well.

5. Per contra B.N.Sandhu, learned Public Prosecutor and Mr. Vipul Jaiman learned counsel for the complainant supported the impugned judgment stating that in the instant case prosecution evidence must be held to have been proved as:

> (i) The appellants had gone to house of deceased as stated by Bhoop Singh (Pw.1) and Sunita (Pw.10).
>
> (ii) The deceased was last seen in the company of appellants as testified by Ratan Lal (Pw.6) and Manoj (Pw.8).
>
> (iii) Death of deceased was homicidal in nature as injury No.1 sustained by the deceased was ante mortem in nature.

6. We have pondered over the submissions and scanned the record. A look at the post mortem report (Ex.P-11) reveals that following injuries were found on the dead body:-

1. Fracture of Left temparo parietal region & Maxilla.
2. Fracture of Left occipital parietal region of skull.
3. Fracture of Right leg mid region of Tibia & Fibula & Tibia is protruded out.
4. Abrasion over chest below neck (Clavicular region) 10cm x 4cm
5. Abrasion with bruise left lumber region 6cm x 4cm
6. Bruise left HypoChondrial region 4cm x 4cm

Out of the six injuries, only injury No.1 was ante mortem. All other injuries were post mortem in nature.

7. From the testimony of Bhoop Singh (Pw.1) and Sunita (Pw.10) the prosecution has established that on October 13, 2001 the appellants had gone to the house of deceased and took him with them. Ratan Lal (Pw.6) and Manoj (Pw.8) deposed that they had seen appellants and deceased together on October 13, 2001 at 5 PM on the way near Jasai village. Deceased consumed liquor with them and around 7.30 PM the deceased and appellants proceeded towards village.

8. Dr. Hony Nischal (Pw.16), who conducted autopsy on the dead body in his deposition stated that he had gone to the spot to perform autopsy. The dead body was lifted out from the well in his presence. The well was dry and an iron gurder got fitted inside the well. Electric motor also got installed in the well. There was no `munder' (parapet wall) around the well. According to Dr.Honey Nischal injury No.1 could be caused by fall on the

iron gurder (यह सही है कि कोई व्यक्ति मृतक कुये मे गिरे और वह बीच में लगे गर्डर पर पडे उसके बाद नीचे गिरे तो चोट नं.1 मृत्यु से पूर्व व अन्य चोट मृत्यु के बाद आयेंगी।) Dr. Nischal further stated that the person if fall on the iron gurder in a tilting position, then his clothes would not be stained with blood. According to Dr. Nischal if injury is inflicted on the head of a standing person, his clothes would definitely be stained with blood. Dr. Nischal further stated that the deceased had consumed liquor prior to his death.

9. Rajendra Prasad (Pw.19), who conducted investigation of the case also admitted that circle boundary of well did not have any wall and the surface of well was below the surface of the land (कुए का फर्मा जमीन से करीब 3-4 इंच नीचा था। यह सही है कि कुआ लगभग जमीन के बराबर था। यह सही है कि कुए के कोई मुंडेर नहीं थी।) Investigating Officer further deposed that informant Bhoop singh had initially suspected that Ram Niwas who was in Army could kill Sanwat Ram. (परिवादी ने राम निवास पर भी शक होना बताया था।).

10. Evidently from the prosecution evidence two inferences are possible. First inference is that the assailant after inflicting injury on the head of Sanwat Ram pushed him into the well and second is that Sanwat Ram in a drunken state slipped into the well in a tilting position and sustained injury on head by fall on iron gurder that resulted in cardio respiratory arrest. Sanwat Ram died instantly and thereafter other post mortem injuries were caused by fall on the mud of well. In Pawan Kumar v. State of Haryana (2001)3 SCC 628 the Apex Court held that where two inferences are possible, one that is favourable to accused should be accepted. It was indicated as under:-

> "Success of the prosecution on the basis of circumstantial evidence will depend on the availability of a complete chain of events so as not to leave any doubt for the conclusion that the act must have been done by the accused person. The evidence on record, ascribed to be circumstantial, ought to justify the inference of the guilt from the incriminating facts and circumstances which are incompatible with the innocence of the accused or guilt of any other person. While, it is true that there should be no missing links in the chain of events so far as the prosecution is concerned, it is not that every one of the links must appear on the surface of the evidence, since some of these links may only be inferred from the proven facts. Circumstances of strong suspicion without however, any conclusive evidence are not sufficient to justify the conviction and it is on this score that great care must be taken in evaluating the circumstantial evidence. In any event, on the availability of two inferences, the one in favour of the accused must be accepted."

11. We also find that the time-gap between the point of time when the appellants and the deceased were last seen alive and when the deceased was found dead was very long. The appellants and deceased were seen together in the evening of October 13, 2001 and dead body got recovered on October 15, 2001. In State of U.P. Vs. Satish (2005)3 SCC 114, their Lordships of Supreme Court had occasion to consider "last seen theory" and it was indicated as under:-

(Para 22)

> "The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and

> possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

12. In Ramreddy Rajesh Khanna Reddy Vs. State of AP (2006)10 SCC 172, the Apex Court held that last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

13. In Sunny Kapoor Vs. State (2006)10 SCC 182 the Apex Court held that for proving guilt of an accused under section 302, the prosecution must lead evidence to connect all links in a chain so as to point guilt of the accused alone and nobody else. The evidence adduced was found short of the requirement and conviction of accused under section 302/34 was held unsustainable.

14. In Lakhan Pal Vs. State (AIR 1979 SC 1620) it was propounded by Hon'ble Supreme Court that the mere fact that the accused and the deceased were together in the field prior to the occurrence does not by itself lead to irresistible inference that the accused must have murdered the deceased.

15. In Mohibur Rahman Vs. State of Assam (2002)6 SCC 715 the Apex Court held as under:-

> "The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more

> establishing connectivity between the accused and the crime. There may be cases where, on account of close proximity of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach in irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide. In the present case there is no such proximity of time and place. The dead body had been recovered about 14 days after the death on which the deceased was last seen in the company of the co-accused. The distance between the two places is about 30-40 km. The event of the two accused persons having departed with the deceased and thus last seen together does not bear such close proximity with the death of the victim by reference to time or place. Merely because the co-accused was last seen with the deceased a few unascertainable number of days before his death, he cannot be held liable for the offence of having caused the death of the deceased. So far as the offence under section 201 IPC is concerned there is no evidence worth the name available against him. He is entitled to an acquittal. Accordingly, the co-accused's conviction under Sections 302/34 and 201/34 IPC along with the sentence passed thereon is set aside. He is acquitted. He shall be released forthwith unless required to be detained in connection with any other offence."

16. In Bodhraj Vs. State of J&K (2002)8 SCC 45 The Apex Court held that last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It was also held that it would be hazardous to come to a conclusion of guilt in cases where there is no other positive evidence to conclude that the accused and the deceased were last seen together. It was further held that where two views are possible, the view in favour of the accused has to be preferred. But where the relevant materials are not considered to arrive at a view by the

trial court, the High Court has a duty to arrive at a correct conclusion taking a view different from the one adopted by the trial court. On facts, reversal of acquittal by High Court was held proper.

17. In State of Karnataka Vs. MV Mahesh (2003)3 SCC 353, the Apex Court indicated as under:- (para 3)

> "Even if we proceed on the basis that the DNA examination resulted in identifying the bones found by the police as that of Beena, still what has to be established is involvement of the respondent in the commission of her murder. For that purpose reliance is placed upon the evidence of Pws.2,6,17,28 and 29 who claim to have seen Beena in the company of the respondent. The explanation sought to be offered by the respondent is that he took her to the place of her relatives next morning at about 5.45 am. while the evidence of the witnesses referred to just now is that they saw her last on 28-11-1985. The statement made by the respondent was false is not established. Merely being seen last together is not enough. What has to be established in a case of this nature is definite evidence to indicate that Beena had been done to death of which the respondent is or must be aware as also proximate to the time of being last seen together. No such clinching evidence is put forth. It is no doubt true that even in absence of the corpus delicit it is possible to establish in an appropriate case commission of murder on appropriate material being made available to the court. In this case no such material is made available to the court."

18. The Hon'ble Supreme Court in Harendra Narain Singh Vs. State of Bihar (AIR 1991 SC 1842) observed that if two views are possible on the evidence adduced in a case of circumstantial evidence, one pointing to the guilt of the accused and the other to his innocence, the court should adopt the later view favourable to the accused.

19. On a close look at the impugned judgment of the learned trial court we find that the appellants have been convicted and sentenced on the basis of suspicion. It appears from the material on record that the appellants and the deceased had been the close relatives and friends. The prosecution could not establish the motive behind the death of deceased. From the evidence of Ratan Lal (Pw.6) and Manoj (Pw.8) it is evident that it was the deceased alone, who consumed liquor with Ratan Lal and Manoj and remained in their company from 5 PM to 7.30 PM. It is difficult to believe that for two and half hours the appellants, who did not consume liquor, would have waited Sanwat Ram. From the testimony of Dr.Nischal and Rajendra Prasad IO, this possibility cannot be ruled out that Sanwat Ram, who was badly drunk while passing near the well accidentally fell into the well and died.

20. Suspicion, however grave it may be, cannot take the place of proof. In the instant case there can be no doubt that the circumstances raise a serious suspicion against the appellants, the medical evidence shows that death of deceased could be accidental and that being the position the benefit of doubt must go to the appellants. In the absence of legal proof of a crime there can be no legal criminality.

21. The prosecution, in our opinion, is not able to establish that the chain of circumstances is complete. The circumstances are not consistent with the hypothesis of the guilt of the appellant and inconsistent with his innocence.

22. For these reasons, we allow the appeal and set aside the impugned judgment dated October 18, 2002 of the learned Additional

Sessions Judge (Fast Track) Kishangarhbas District Alwar. We acquit the appellants of the charges under sections 302 and 201 IPC. The appellants Rajesh and Nihal Singh, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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